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NO. _____

IN THE

Supreme Court of the United States

October Term, 1961

CHARLES ELBERT WILLIAMS, *Petitioner*

v.

H. E. MOORE, WARDEN, TEXAS DEPARTMENT OF CORRECTIONS, *Respondent*

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the Fifth Circuit

Petitioner Charles Elbert Williams prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled cause on January 23, 1961.

Citations to Opinions Below

The memorandum opinion of the United States District Court for the Southern District of Texas is unreported and is printed in the accompanying record certified by the Clerk of the United States Court of Appeals, Fifth

Circuit (R. p.). The opinion of the United States Court of Appeals, Fifth Circuit is on the certified copy of the record, has not been officially reported and is Appendix A herein.

Jurisdiction

The judgment of the United States Court of Appeal Fifth Circuit, was entered January 25, 1961. Rehearing was denied February 18, 1961. No opinion was rendered in connection therewith. Exhibit B of the appendix (copy of letter from Clerk).

The jurisdiction of this Court is invoked under Title 28 *U.S.C.A.*, Sec. 1254 (1) and Title 28 *U.S.C.A.*, Sec. 2101(c).

Questions Presented

1.

The Court erred by refusing to grant and issue the Writ of Habeas Corpus and the relief sought, because the purported confession was extorted by brutality and violence and the introduction of same deprived petitioner of due process and equal protection of laws as guaranteed to petitioner by the Fifth and Fourteenth Amendments to the Constitution of the United States.

2.

The Court erred by refusing to grant and issue the Writ of Habeas Corpus and the relief sought, because the Court appointed attorneys suppressed the evidence petitioner had to offer in his defense by refusing to allow accused to testify, and by doing so, accused was denied effective assistance of counsel contrary to the Sixth Amendment to the Constitution of the United States.

3.

Due process of law includes the right to and consultation with counsel, preparation for trial and the presentation of the defense of which the case in its nature is susceptible. These rights were in all effective sense denied.

4.

There was no fair impartial and deliberate trial and there was therefore a denial of due process.

Statutes Involved

Article 776 *Code of Criminal Procedure of the State of Texas.*

Fifth, Sixth and Fourteenth Amendments to the *Constitution of the United States.*

They are printed in Appendix A, pages 12-14.

Statement

Having exhausted all of his remedies in the State Court, Petitioner, Charles Elbert Williams, on the 15th day of Nov., 1960, filed a Petition for Writ of Habeas Corpus against H. E. Moore, Warden, Texas Department of Corrections in the District Court of the United States for the Southern District of Texas, Houston Division.

The jurisdiction of the District Court was invoked pursuant to 28 U.S.C.A., Sections 2241-2254, as a Civil action under the Constitution and laws of the United States, viz., the Fourteenth Amendment of said Constitution.

In due time Respondent filed his answer.

On the 16th day of Nov. 1960, the Court declined to grant and issue the Writ of Habeas Corpus and the relief sought.

On the 18th day of Nov. 1960, Petitioner filed Notice of Appeal and his Appeal Bond.

The United States Court of Appeals for the Fifth Circuit affirmed the action of the District Court, by an opinion dated January 23, 1961. February 18, 1961, Petitioner's Motion for Rehearing was denied. Appendix A, page 15,

Execution has been set May 19, 1961, before sunrise. Request is here and now made for stay of execution pending disposition of the Petition by the United States Supreme Court.

Reasons For Granting The Writ

1.

There is a conflict between the decision in the instant case and the case of *White v. Ragen*, 324 U.S. 760; 89 L. Ed. 1348, wherein the Supreme Court held: "Where a Petition for a Writ of Habeas Corpus was denied without requiring the respondent to answer and without a hearing, (as was done by the Court of Criminal Appeals of Texas) the truth of the allegations therein will be assumed on appeal in determining whether the Petition was rightly denied."

The Court of Appeals failed to recognize the rule of law thus announced.

2.

On page two paragraph two the Court of Appeals said, "No objection was made by counsel for the accused to the introduction of the confession."

We think such failure to object was through inadvertence or incompetency on the part of Court appointed counsel.

The accused was not trained in the law and did not know how and when to make objections this was the duty

of Counsel. *Malinski v. New York*, 324 U.S. 401-439; 89 L. Ed. 1029.

Attorneys, as officers of the Court, are bound to defend one charged with crime when required to do so by appointment of the Court. The mere presence of Counsel does not meet the concepts of the Constitutional requirement. *Powell v. Ala.*, 287 U.S. 45; 77 L. Ed. 158.

On page two, first paragraph of the opinion of the Court of Appeals, it is said, "There was no charge of unseemly conduct in or about the Courtroom." Nevertheless on page 40, S.F. officer Freeman Brown testified that the accused was carried to jail in another county for safe-keeping. Officer Ben Mark also testified that accused was carried to an adjoining County and placed in jail. Why? The mob spirit was present.

Beginning on page 7, S.F., accused testified that an officer hit him on the head with a pistol and on page 8, S.F., he pointed to a hole in his head. The trial Court would not look at the scar.

In *Brown v. Miss.*, 297 U.S. 278; 80 L. Ed. 682, where evidence of brutality exhibited by scars were on the body of the accused, the Supreme Court of the United States said, "There was thus enough before the Court when these confessions were offered to make known to the Court that they were not, beyond all reasonable doubt, free and voluntary; and the failure of the Court to exclude the confession is sufficient to reverse the judgment, under every rule of procedure that has heretofore been prescribed and hence it was not necessary subsequently to renew the objections by Motion or otherwise."

On page two, paragraph two, of the opinion of the Court of Appeals, after stating that Counsel in the State

trial Court did not object to the introduction of the confessions, also says, "Nor was any such contention made as a part of the Motion for New Trial filed by Court appointed Counsel, but amended by present Counsel for Petitioner, who thereafter represented Appellant on appeal. Present Counsel was bound and limited to the record as made up in the trial Court and could not object to the purported confession that was already a part of the record and we do not think this burden should be placed upon us.

6.

In habeas corpus proceedings in a Federal District Court a State prisoner should allege specifically in cases where material, the uncontradicted evidentiary facts appearing in the record upon which his allegation of denial of Constitutional rights is based.

Brown v. Allen, 344 U.S. 443, 97 L. Ed. 469. This was done in the accused's Petition and also in his briefs.

The accused testified (S.F. page 7) the officers in Cherokee County told him they were going to kill him if he did not admit the offense; that he was beaten with a rubber hose; that he was struck on the head; that the officer put hand cuffs on him and hit him on the head with a pistol; on page 8 S.F., he pointed to a scar and said it was from the blow with the pistol; that an officer kicked him in the sides while the other officer was beating him. On page 9 (S.F.), two men in the cell told accused that he had better cough up; that the officers had killed three men in the same jail. There is testimony to the same effect on page 10 (S.F.).

There is testimony on page 11 (S.F.), that if accused signed papers that were presented to him he would prob-

ably make bond, this was told to him by Nat Patton, Jr., the County Attorney; he was not given the proper warning. On page 12 (S.F.), accused was again told to sign the papers if he wanted to make a bond; he was not permitted to read them.

Accused testified he did not see the Court appointed Counsel until the date of the trial.

On pages 17 and 18 (S.F.), accused testifies about having had an affair with the complaining witness in August or September, 1958.

7.

The testimony of accused about sexual relations with the alleged victim and about the officers in Cherokee County beating him is not contradicted, and should be believed.

8.

Under Article 776, *C.C.P. of Texas*, Court appointed Counsel could have filed an application for a suspended sentence, there being nothing in the record showing a prior conviction.

No one knows how the jury would have felt about the affair with the boy being eighteen years of age and the woman forty-eight.

Accused should have been allowed to testify in his own behalf, but was advised against it by Counsel.

Counsel for accused on cross examination asked each State witness: 1. "Do you know Charles Elbert Williams?" 2. "How long have you known him?" 3. "Was he a good worker?"

9.

The trial was a farce. On page 77 (S.F.), Counsel for accused said petitioner was carried to Rusk for his protection; on the same page it is shown that no defense whatever was offered. If this petitioner has not been deprived of equal protection and due process of laws, then it is absolutely and positively impossible to contravene the XIV Amendment to the Constitution of the United States.

Conclusion

For the foregoing reasons this Petition for a Writ of Certiorari and the relief sought, should be granted.

Respectfully submitted,

THOS. H. DENT
Counsel for Petitioner

Date _____

APPENDIX A

In The
UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 18684

CHARLES ELBERT WILLIAMS, Appellant
versus
H. F. MOORE, Warden Texas Department of Corrections, Appellee

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Appeal from the United States District Court for the Southern District of Texas

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(January 23, 1961)

Before TUTTLE, Chief Judge, and BROWN and WISDOM, Circuit Judges.

TUTTLE, Chief Judge: This is an appeal from a judgment dismissing a petition for habeas corpus in a capital case after full hearing on oral testimony in the trial court. The appellant, a Negro, was indicted, tried, and convicted in the Texas criminal courts on a charge of rape of a white woman.

The basis of the relief sought in the Federal court is the allegation that a confession that was introduced on the trial was coerced by violence and threats of violence and

false promises by the police officers and the prosecuting attorney and an allegation that appointed counsel were incompetent, and they prevented appellant from testifying that the alleged rape was in fact the voluntary act of the prosecutrix by telling him that if he took the stand and testified he would be shot and killed in the courtroom. There was no charge of unseemly conduct in or about the courtroom, or any threats of bodily injury by popular clamor or mob violence.

On the state court trial the prosecutor laid full groundwork for introduction of the confession, and no objection to its reception in evidence was made by counsel for the accused. Nor was any such contention made as a part of the motion for new trial filed by court appointed counsel but amended by present counsel for petitioner, who thereafter represented appellant in the appeal. The conviction was affirmed on appeal. *Williams v. State*, 335 S.W.2d 224.

Our reading of the entire trial record disclosed no basis on which the Court of Criminal Appeals could have found error. The record disclosed that counsel was alert and vigorous in cross examination and in objecting to evidence, and that the trial court was prompt to protect the accused's legal rights.

The court denied a motion for rehearing and the United States Supreme Court denied a petition for certiorari, 364 U.S. 851.

Thereafter the appellant filed a motion for leave to file a petition for writ of habeas corpus with the Court of Criminal Appeals of Texas. This motion was denied. This being the court of last resort for the entertaining of such a motion, we find that appellant had exhausted all state remedies and that the trial court had jurisdiction to entertain this petition.

The trial court, the Honorable Allen B. Hannay, set the petition down for hearing on November 16, 1960. The petitioner was sworn and testified that after he was arrested in Houston County, and had been held in jail there over night, he was taken to Rusk, in adjacent Cherokee County, by several police officers, and there was subjected to beatings and threats, including the snapping of a partially loaded pistol in his face to force him to sign a confession; that after he had been subjected to such threats and abuse he agreed to confess, and was then returned to Houston County, where the county prosecutor tricked him into signing the confession by telling him it was an application for bond. He testified he did not read it or know what was in it, but that he signed it while folded so he could not see the statement.

Williams also testified that his counsel had not been appointed until the day of the trial, that he told counsel that the intercourse had been at the invitation of the accused, and that the lawyer told him he did not dare testify to that or the prosecutrix's brother would shoot him on the witness stand. He did not testify that he had ever told counsel that he had given the confession or that it had been coereed.

The State introduced as witnesses the county attorney and a deputy sheriff and a state police officer, all of whom testified that the confession was made within an hour after appellant's arrest and at his own suggestion. And was written up and read to him and signed only after he had been warned of his constitutional rights. The document bears the date as testified to by the officers rather than the date three weeks later claimed by the accused.

The appointed counsel testified that he had been appointed several weeks before the trial and had had several

conferences with appellant, that he had not decided whether to advise him to take the witness stand until near the close of the state case. He denied telling appellant that he would be shot by anybody if he told his story from the witness chair. He did not testify whether he knew anything about the confession.

On the evidence thus adduced, and after reading the entire trial record in the State Court case (see *Brown v. Allen*, 344 U.S. 443), the trial court found that the confession had been made voluntarily and was admissible, and that counsel had not knowingly suppressed any evidence of benefit to the petitioner.

In light of failure of the accused to raise the issue of coercion on the trial, although represented by competent counsel, and in view of the overwhelming testimony of regularity in the giving of the confession, and further in light of the admission by the defendant in the habeas corpus trial that the act of intercourse had actually occurred—thus eliminating all question of identification present in many rape cases—we conclude that the trial court's findings are fully supported in the habeas corpus record.

The judgment is AFFIRMED.

ART. 776—SUSPENDED SENTENCE

Where there is a conviction of any felony in any district or criminal district court of this State, except murder, perjury, burglary of a private residence at night, robbery, arson, incest, bigamy, seduction, and abortion, and the punishment assessed by the jury shall not exceed five years, the court shall suspend sentence upon written sworn application made therefore by the defendant, filed before the trial begins. When the defendant has no counsel, the court

shall inform the defendant of his right to make such application, and the court shall appoint counsel to prepare and present same if desired by defendant: In no case shall sentence be suspended except when the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. Acts 1913, p. 8.

AMENDMENT V—CAPITAL CRIMES, DUE PROCESS

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI—JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C.A. 1254, Courts of Appeals—Certiorari—cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By Writ of Certiorari granted upon the Petition of any party to any Civil or Criminal case, before or after rendition of Judgment or Decree.

28 U.S.C.A. 2101, Supreme Court—time for Appeal or Certiorari.

(C) Any other appeal or any Writ of Certiorari intending to bring a Judgment or Decree in a Civil action, suit or proceeding before the Supreme Court for review, shall be taken or applied for within ninety days after the entry of Judgment or Decree.

CERTIFICATE OF SERVICE

Two copies of this brief were deposited in the United States Mail at Houston, Texas, on this _____ day of May, 1961, and addressed to the Hon. Will Wilson, Attorney General of Texas, Office of the Attorney General, Austin, Texas, with postpage prepaid

THOS. H. DENT
Attorney for Petitioner

EXHIBIT A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

OFFICE OF THE CLERK
February 18, 1961

EDWARD W. WADSWORTH
Clerk

POST OFFICE BOX 23
NEW ORLEANS 6, LA.

Mr. Thomas H. Dent
Attorney at Law
25171/2 Market Street
Galveston, Texas

Re: No. 18,684—Charles Elbert Williams vs. H. E. Moore, Warden, Texas Department of Corrections.

Gentlemen:

You are hereby advised that the Court has today entered an order denying the Petition for Rehearing in the above case. No opinion was rendered in connection therewith.

Very truly yours,

Edward W. Wadsworth
EDWARD W. WADSWORTH,
Clerk